

Testimony of Michael J. Ferrante
President, Massachusetts Oilheat Council

■
Massachusetts Advanced Biofuels Task Force Public Hearing
March 11, 2008
State House, Boston, MA

Distinguished members of the Massachusetts Advanced Biofuels Task Force, it's my pleasure to come before you once again to address House Bill 4364 as it relates to the emergence of biofuels as a blend stock for the home heating fuel industry and Oilheat consumers in Massachusetts, and to offer comments on the Task Force's **Draft Summary Recommendations** issued on March 6, 2008.

My name is Michael Ferrante, and I'm President of the Massachusetts Oilheat Council (MOC), the state trade association representing 350 retail and wholesale heating oil companies across the state; as well as over 6000 licensed oil heating equipment technicians; and all of the major manufacturers of oil-fired furnaces, boilers, burners and water heaters. Established in 1955, MOC has earned national recognition for its role in helping the industry develop and embrace cleaner burning home heating fuels and programs that encourage energy efficiency.

As we reported to the Task Force back on January 17, since our industry is ultimately responsible for securing, storing, blending and delivering biofuel products to homes and businesses statewide, and answering consumer queries about the fuel's benefits, we want to ensure that the roll-out of this fuel goes as smoothly as possible, and that we work strategically with state government to ensure that we overcome all obstacles before implementing of a biofuel initiative in the Commonwealth.

■ **Industry Supports Biofuel Mandate**

First, let me report on an important development within the Oilheat industry in Massachusetts. Last week the Board of Directors of the MOC, which is comprised of representatives from over 40 retail and wholesale heating oil companies, voted unanimously to support a statewide biofuel mandate at a minimum of blend of 2% within the home heating oil marketplace. Our Board's support for a biofuel mandate speaks to our sincere desire to advance cleaner burning home heating fuel in over 1 million homes statewide. A 2% blend represents a reduction of over 30 million gallons in traditional home heating oil usage, and hence a significant reduction in fossil fuel use in Massachusetts.

▪ Draft Report Comments

In reviewing the draft report, we want to applaud the Task Force for recommending carefully targeted mandates, such as requirements for minimum percentages of biodiesel in motor and heating fuel, and for noting that mandates should be as flexible and technology neutral as possible, such as by including all appropriate bio-based fuels that can substitute for petroleum diesel. MOC supports the use of a trading system for meeting the requirements.

We also suggest that the state seriously consider:

- Using total heating oil sales volume in Massachusetts to comply with the various percentage blends called for by a mandate and move the data collection for compliance upstream to the wholesale heating oil terminal or “rack”. This will take the burden off the shoulders of every retail heating oil dealer – some of whom very small – and provide the Commonwealth with a more accurate measuring system for a mandate.
- Consider implementing tax incentives or credits for consumers who embrace the use of biofuel and can demonstrate the use of biofuel in their home heating system.
- Easing of the permit process for wholesale terminal operators as an incentive to upgrade and/or build new storage tanks and facilities.
- Amend House Bill 4364 to do away with the requirement that manufacturers of biodiesel be required to hold BQ-9000 accreditation. MOC and the National Biodiesel Board (NBB) recognize that BQ-9000 is an excellent program and we stand solidly behind the effort. However, we are concerned that as currently written the National Biodiesel Accreditation Commission (NBAC) could be subject to significant legal liability. NBB has submitted the following observations to MOC, and I offer them in my testimony for your serious consideration:
 1. The NBAC is not a State Agency. If BQ-9000 certification were required by state law as a precondition of selling biodiesel in Massachusetts, and if NBAC were expected to implement that requirement, it would amount to a nonprofit corporation performing a state agency’s job. The National Biodiesel Accreditation Commission, by deciding which biodiesel producers or marketers did or did not meet the BQ-9000 standard, would effectively be deciding which producers and marketers could and could not do business in Massachusetts. This would be a business life-or-death decision for a biodiesel producer or marketer. In granting or denying state licenses and permits, state agencies make these economically critical decisions all the time. But there are several important attributes, constraints and protections required of and possessed by a state agency, designed to protect both the rights of citizens and the functionality of government, which are not attributable to the National Biodiesel Accreditation Commission:

2. Absence of Governmental Protections from Liability. A state agency is clothed with measured protection against tort lawsuits brought by aggrieved parties. While the days of complete sovereign immunity for state government are long gone, a state government and its state agencies do nevertheless possess today measured tort immunity as provided by its state tort claims act. A state tort claims act sets forth significant procedural and substantive hurdles for an aggrieved citizen-plaintiff who would recover a judgment for damages against state government. The individual state agency board members and commissioners who serve pursuant to state law receive the benefits of this protection personally. The National Biodiesel Accreditation Commission is not a state agency. Neither it nor its individual commissioners possess this important statutory protection against tort lawsuits by aggrieved citizens.
3. Absence of Procedural Safeguards. A state agency is appropriately constrained by Notice-and-Public-Comment procedures designed to assure full and fair consideration of all rules it adopts, and the legal requirement to provide complete due process to all regulated parties against whom it enforces its rules. These rights include the right to a full evidentiary hearing; a prescribed burden of proof; the right to a set of clearly stated findings of fact and reasoned conclusion of law; and the right to appeal an agency decision to the state courts. Those procedural requirements, required of all Massachusetts state agencies by the Massachusetts Administrative Procedures Act, simply do not apply to the National Biodiesel Accreditation Commission. A Massachusetts biodiesel producer denied BQ-9000 certification would not have the legal right to appeal an NBAC decision if the producer alleged his denial to be arbitrary and capricious or beyond the authority of the Commission. Biodiesel producers and marketers would be deprived of all the basic procedural rights they would have before a state agency.
4. BQ-9000 does not guarantee D-6751 compliant fuel. It is not the measure of biodiesel. It is the measure of a company. The BQ-9000 program certifies the level of achievement attained by a company's Quality Control/Quality Assurance program. It does not certify the fuel itself. It's similar to the ISO 9001 program: An industrial boiler manufacturer might be an ISO-9001 company. That doesn't guarantee that the industrial boilers manufactured by the company each meet the ASME Standard for Industrial Boilers. It means that the company has a QA program which meets the requirements of ISO 9001. Similarly, our BQ-9000 program does not consist of tests of the final product for compliance with ASTM D-6751. Instead, it tests the elements of a QA program which, competently operated by the certified company, should result in, but does not itself guarantee, the delivery of D-6751 compliant biodiesel. The main elements of our BQ-9000 program require inter alia:
 - A written Quality Assurance Policy.
 - A written Quality Manual.
 - Quality System Procedures.
 - Document Control.
 - Document Retention system.

- A designated Quality Management Representative.
- An Internal Quality System Audit.
- A Quality Management Review procedure

The BQ-9000 program is not an ASTM D-6751 testing program. It's a measure of the quality systems in place by the producer or marketer, respectively which, if applied, are designed to result consistently in D-6751 compliant biodiesel. The BQ-9000 program is not a measure of biodiesel; it is the measure of a company. A state government seeking to assure its citizens of biodiesel meeting ASTM D-6751 would spend its resources most effectively by sampling and testing biodiesel for D-6751 compliance.

In conclusion, BQ-9000 is a Quality Assurance standard which takes the measure of a company's ability, in the judgment of the Commission and its auditors, to consistently produce quality biodiesel. It measures the company, not the biodiesel. It is a voluntary certification program. A company can produce and sell D-6751-compliant biodiesel without being BQ-9000 certified. But a BQ-9000 certified company has a QA program in place that should make its product more valuable in the marketplace. The National Biodiesel Accreditation Commission neither possesses the protections afforded to nor the procedural restrictions nor political responsiveness required of, a state agency.

▪ Other Important Considerations

As we've stated in earlier testimony, the state must not lose sight of these vitally important factors in making a biofuel initiative successful in Massachusetts.

1.) The current core **terminal infrastructure** statewide for storage of heating oil, blending of heating oil with biofuel, and distribution to the retail heating oil dealer is not sufficient enough to handle a biofuel mandate by 2010. Infrastructure improvements must take place so that all fuel oil retailers statewide can readily access properly-mixed biofuel supplies. Right now, there are only a handful of wholesale terminal locations in Massachusetts that have the necessary upgrades to properly store, blend and dispense biofuel. Unless more terminals invest in these upgrades, which can cost between \$500,000 and \$3 million, under a biofuel mandate many retailers will be forced to inappropriately "splash" blend heating oil and biofuel, a process that is akin to making a cocktail – gather the ingredients and mix by hand. These costly terminal upgrades will not happen overnight. The state and local permitting process alone could take 12 – 18 months.

2.) Depending on winter's severity, Massachusetts uses between 850 million to 1 billion gallons of heating oil annually in the residential sector. A mandated 2% blend of biofuel would require between 20 and 30 million gallons of **biofuel supply**. We must ensure that we have reliable sources of multiple feed stocks that will enable this transition to take place smoothly and without disruption during peak demand periods. We must also ensure we have reliable sources of multiple feed stocks so that all biofuel manufacturers can meet or exceed **American Society for Testing and Materials** (ASTM) standards for

product quality. ATSM standards will deter heating system malfunctions and ensure that all manufacturers produce the highest quality fuels.

3.) We must also never lose sight of the *critical import/export issues* a state biofuel mandate will have on supply coming to and from Massachusetts. Currently, heating oil retailers in Massachusetts pick up product at terminals in Providence, Rhode Island and Albany, New York. A biofuel mandate will certainly cause a price differential between heating oil sold in Massachusetts if neighboring states do not have a similar mandate, and a mandate would also make heating oil supplies less fungible during peak demand months when products can be sent to nearby states to help meet that demand.

A biofuel mandate would also place state line truck stops in a very serious uncompetitive situation with respect to diesel fuel sales if neighboring states with mandates are selling non-bio blends at a lower price.

4.) *Dealer and consumer understanding and acceptance of biofuel* are critical to its success. Industry surveys indicate that retail heating oil dealers and consumers still lack a complete understanding of biofuel and in order to grow demand for the product, our association and the National Biodiesel Board has embarked on a dealer/consumer outreach campaign to explain the key advantages of biofuel including comfort, performance, environmental stewardship and the energy security of a home-grown fuel. At the same time, this outreach campaign will help mitigate dealer/consumer concerns over any increase that will occur in the cost of home heating oil once it's blended with cleaner-burning biofuel.

Thank you again for the opportunity to provide testimony to the Advanced Biofuels Task Force. I look forward to working with the task force and the legislature on advancing this important alternative energy source for the home heating marketplace in Massachusetts.

Michael Ferrante
President

Massachusetts Oilheat Council
118 Cedar Street, Wellesley Hills, MA 02481
Tel: 781.237.0730 Fax: 781.237.2442
www.massoilheat.org